

U.S. District Court
Eastern District of Arkansas (Pine Bluff)
CIVIL DOCKET FOR CASE #: 5:14-cv-00359-JM
Internal Use Only

Pinder v. McDowell et al
Assigned to: Judge James M. Moody Jr.
Case in other court: USCA8, 15-01721
USCA8, 15-02033
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 09/26/2014
Date Terminated: 02/09/2017
Jury Demand: Both
Nature of Suit: 555 Prison Condition: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Steven Pinder
ADC #123397

represented by **Steven Pinder**
ADC #123397
VARNER UNIT
Arkansas Department of Correction
Post Office Box 600
Grady, AR 71644-0600
PRO SE

V.

Defendant

Alva Green McDowell
Health Services Administrator, Tucker MSU

represented by **Brent Jay Eubanks**
Humphries, Odum & Eubanks
Post Office Box 20670
White Hall, AR 71612
870-247-7035
Fax: 870-247-7459
Email: brent@humphrieslaw.net
ATTORNEY TO BE NOTICED

Defendant

Dotson
Director of Nursing

represented by **Brent Jay Eubanks**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sonya Davis-Peppers
Doctor

represented by **Brent Jay Eubanks**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jacqueline Carswell
Nurse Practitioner

represented by **Brent Jay Eubanks**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Boston
Nurse

represented by **Brent Jay Eubanks**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Horner
Nurse

represented by **Brent Jay Eubanks**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jane Doe
Nurse
TERMINATED: 03/29/2016

Defendant

Floss
Doctor and Regional Supervisor

represented by **Brent Jay Eubanks**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Roy Griffin
Assistant Director, ADC

represented by **Amber R. Schubert**
Arkansas Attorney General's Office
Catlett–Prien Tower Building
323 Center Street
Suite 200
Little Rock, AR 72201–2610
501–682–2081
Fax: 501–682–2591
Email: amber.schubert@arkansasag.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles W. Lyford
Arkansas Attorney General's Office
Catlett–Prien Tower Building
323 Center Street
Suite 200
Little Rock, AR 72201–2610
501–682–3676
Email: charles.lyford@arkansasag.gov
TERMINATED: 01/12/2017
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Jorge Dominicus
Chief Executive Officer, Correct Care
Services (originally named as John Doe)

represented by **Brent Jay Eubanks**
(See above for address)
LEAD ATTORNEY

and then Jorge Domenicis)

ATTORNEY TO BE NOTICED

Defendant

Correct Care Services

represented by **Brent Jay Eubanks**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Maxor Pharmacy

represented by **Michael Paul Vanderford**
Anderson, Murphy & Hopkins, L.L.P.
Regions Center
400 West Capitol Avenue
Suite 2400
Little Rock, AR 72201-4581
501-210-3607
Email: vanderford@amhfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Hamilton
Nurse

represented by **Brent Jay Eubanks**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

William Straughn
Warden

represented by **Amber R. Schubert**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles W. Lyford
(See above for address)
TERMINATED: 01/12/2017
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Arkansas Department of Correction
TERMINATED: 12/05/2014

Email All Attorneys (Primary Address)
Email All Attorneys (Primary and Secondary Address)

Date Filed	#	Page	Docket Text
09/26/2014	<u>1</u>		MOTION for Leave to Proceed in forma pauperis by Steven Pinder. (ljb) (Entered: 09/26/2014)
09/26/2014	<u>2</u>		COMPLAINT with Jury Demand against All Defendants filed by Steven Pinder. (ljb) (Entered: 09/26/2014)

09/26/2014	<u>3</u>	MEMORANDUM of Law filed by Steven Pinder. (ljb) (Entered: 09/26/2014)
09/26/2014	<u>4</u>	MOTION for Temporary Restraining Order and Order to Show Cause for Preliminary Injunction by Steven Pinder. (ljb) (Entered: 09/26/2014)
09/29/2014	<u>5</u>	INITIAL ORDER FOR PRO SE PRISONER-PLAINTIFFS granting <u>1</u> Motion for Leave to Proceed in forma pauperis. Monthly payments will be withdrawn from plaintiff's prison trust account until the \$350.00 filing fee is paid in full. The Clerk of the Court is directed to send a copy of this Order to the ADC Offices and the Warden of the Cummins Maximum Security Unit. Signed by Magistrate Judge Beth Deere on 9/29/2014. (ks) (Entered: 09/29/2014)
09/29/2014	<u>6</u>	PARTIAL RECOMMENDED DISPOSITION recommending that Plaintiff's <u>4</u> Motion for Preliminary Injunctive Relief be denied. Signed by Magistrate Judge Beth Deere on 9/29/2014. (ks) (Entered: 09/29/2014)
10/03/2014	<u>7</u>	NOTICE OF FILING Addresses for Service of Defts by Steven Pinder (tjb) (Entered: 10/03/2014)
10/06/2014	<u>8</u>	OBJECTION to <u>6</u> Partial Recommended Disposition by Steven Pinder. (ljb) (Entered: 10/06/2014)
10/06/2014	<u>9</u>	ORDER ADOPTING <u>6</u> PARTIAL REPORT AND RECOMMENDATIONS. Plaintiff's <u>4</u> Motion for Preliminary Injunctive Relief is DENIED, without prejudice. Signed by Judge James M. Moody Jr. on 10/6/2014. (mcz) (Entered: 10/06/2014)
10/10/2014	<u>10</u>	MOTION for Recusal by Steven Pinder. (ljb) (Entered: 10/10/2014)
10/14/2014	<u>11</u>	ORDER denying <u>10</u> Motion for Recusal. Signed by Magistrate Judge Beth Deere on 10/14/2014. (jak) (Entered: 10/14/2014)
10/16/2014	<u>12</u>	ORDER: Mr. Pinder has 30 days to amend his complaint to specifically state his constitutional claims against each named Defendant. Failure to comply with this Order could result in the dismissal of his claims, without prejudice. Signed by Magistrate Judge Beth Deere on 10/16/2014. (ks) (Entered: 10/16/2014)
11/14/2014	<u>13</u>	AMENDED COMPLAINT with Jury Demand against All Defendants filed by Steven Pinder. (ljb) (Entered: 11/17/2014)
11/20/2014	<u>14</u>	ORDER directing the Clerk of Court to to prepare summonses for Defendants McDowell, Dotson, Peppers, Carswell, Boston, Horner, Hamilton, Floss, Griffin, Correct Care Services, Maxor Pharmacy, and Straughn; and the United States Marshal is directed to serve a copy of the <u>2</u> complaint and the <u>13</u> amended complaint, along with any attachments, and a summons for each of these Defendants. Service for Defendants McDowell, Dotson, Peppers, Carswell, Boston, Horner, Hamilton, Floss and Correct Care Services should be through Humphries, Odum & Eubanks, Post Office Box 20670, White Hall, Arkansas 71612, without prepayment of fees and costs or posting security. Service for Defendants Griffin and Straughn should be through the Compliance Division of the Arkansas Department of Correction, P.O. Box 20550, Pine Bluff, Arkansas 71612, without prepayment of fees and costs or posting security. Maxor Pharmacy should be served at 416 Mary Lindsey Polk Drive, Suite 515, Franklin, Tennessee 37067. If Mr. Pinder seeks to proceed

		on his claims against the Doe Defendants, he must identify and serve these Defendants within 120 days. Signed by Magistrate Judge Beth Deere on 11/20/2014. (ks) (Entered: 11/20/2014)
11/20/2014	<u>15</u>	PARTIAL RECOMMENDED DISPOSITION recommending that Mr. Pinder's claims against the ADC be DISMISSED, with prejudice. Claims against the remaining Defendants should be allowed to proceed. Signed by Magistrate Judge Beth Deere on 11/20/2014. (ks) (Entered: 11/20/2014)
11/20/2014		Summons Issued as to Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Dotson, Floss, Roy Griffin, Hamilton, Horner, Maxor Pharmacy, Alva Green McDowell, William Straughn and forwarded to the USMS for service. (ks) (Entered: 11/20/2014)
12/02/2014	<u>16</u>	SUMMONS Returned Executed. Maxor Pharmacy served on 11/24/2014. (rhm) (Entered: 12/02/2014)
12/05/2014	<u>17</u>	ORDER approving and adopting in all respects in its entirety <u>15</u> Partial Recommended Disposition. Mr. Pinder's claims against the Arkansas Department of Correction are dismissed, with prejudice. Signed by Judge James M. Moody Jr. on 12/5/2014. (ljb) (Entered: 12/05/2014)
12/09/2014	<u>18</u>	NOTICE of Appearance by Charles W. Lyford on behalf of Roy Griffin, William Straughn (Lyford, Charles) (Entered: 12/09/2014)
12/09/2014	<u>19</u>	ANSWER to <u>13</u> Amended Complaint with Jury Demand by Roy Griffin, William Straughn.(Lyford, Charles) (Entered: 12/09/2014)
12/09/2014	<u>20</u>	SUMMONS Returned Executed. William Straughn served on 12/1/2014. (mef) (Entered: 12/09/2014)
12/09/2014	<u>21</u>	SUMMONS Returned Executed. Roy Griffin served on 12/1/2014. (rhm) (Entered: 12/09/2014)
12/12/2014	<u>22</u>	NOTICE of Appearance by Michael Paul Vanderford on behalf of Maxor Pharmacy (Vanderford, Michael) (Entered: 12/12/2014)
12/12/2014	<u>23</u>	MOTION to Dismiss <i>and, in the Alternative, Answer to Plaintiff's Complaint</i> by Maxor Pharmacy (Vanderford, Michael) (Entered: 12/12/2014)
12/19/2014	<u>24</u>	RESPONSES to <u>19</u> Answer to Amended Complaint and <u>23</u> Motion to Dismiss by Steven Pinder. (ljb) (Entered: 12/19/2014)
12/19/2014	<u>25</u>	MOTION for Temporary Restraining Order by Steven Pinder. (kdr) (Entered: 12/19/2014)
12/24/2014	<u>26</u>	SUMMONS Returned Executed. Alva Green McDowell served on 12/15/2014. (rhm) (Entered: 12/24/2014)
12/24/2014	<u>27</u>	SUMMONS Returned Executed. Dotson served on 12/15/2014. (rhm) (Entered: 12/24/2014)
12/24/2014	<u>28</u>	SUMMONS Returned Executed. Sonya Davis–Peppers served on 12/15/2014. (rhm) (Entered: 12/24/2014)
12/24/2014	<u>29</u>	SUMMONS Returned Executed. Jacqueline Carswell served on 12/15/2014. (rhm) (Entered: 12/24/2014)

12/24/2014	<u>30</u>	SUMMONS Returned Executed. Boston served on 12/15/2014. (rhbm) (Entered: 12/24/2014)
12/24/2014	<u>31</u>	SUMMONS Returned Executed. Horner served on 12/15/2014. (rhbm) (Entered: 12/24/2014)
12/24/2014	<u>32</u>	SUMMONS Returned Executed. Hamilton served on 12/15/2014. (rhbm) (Entered: 12/24/2014)
12/24/2014	<u>33</u>	SUMMONS Returned Executed. Floss served on 12/15/2014. (rhbm) (Entered: 12/24/2014)
12/24/2014	<u>34</u>	SUMMONS Returned Executed. Correct Care Services served on 12/15/2014. (rhbm) (Entered: 12/24/2014)
12/24/2014	<u>35</u>	RESPONSE to <u>23</u> MOTION to Dismiss filed by Steven Pinder. (kdr) (Entered: 12/24/2014)
12/30/2014	<u>36</u>	AMENDED MOTION for Temporary Restraining Order by Steven Pinder. (ljb) (Entered: 12/30/2014)
01/05/2015	<u>37</u>	NOTICE of Appearance by Brent Jay Eubanks on behalf of Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Dotson, Floss, Hamilton, Horner, Alva Green McDowell (Eubanks, Brent) (Entered: 01/05/2015)
01/05/2015	<u>38</u>	ANSWER to <u>13</u> Amended Complaint by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Dotson, Floss, Hamilton, Horner, Alva Green McDowell.(Eubanks, Brent) (Entered: 01/05/2015)
01/06/2015	<u>39</u>	MOTION to Vacate <i>/Revoke Plaintiff's In Forma Pauperis Status</i> by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Dotson, Floss, Hamilton, Horner, Alva Green McDowell (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B)(Eubanks, Brent) (Entered: 01/06/2015)
01/06/2015	<u>40</u>	BRIEF IN SUPPORT re <u>39</u> Motion to Vacate, <i>/Revoke Plaintiff's In Forma Pauperis Status</i> filed by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Dotson, Floss, Hamilton, Horner, Alva Green McDowell. (Eubanks, Brent) (Entered: 01/06/2015)
01/06/2015	<u>41</u>	RESPONSE to Motion re <u>36</u> MOTION for Temporary Restraining Order filed by Roy Griffin, William Straughn. (Attachments: # <u>1</u> Exhibit)(Lyford, Charles) (Entered: 01/06/2015)
01/06/2015	<u>42</u>	BRIEF IN SUPPORT re <u>41</u> Response to Motion filed by Roy Griffin, William Straughn. (Lyford, Charles) (Entered: 01/06/2015)
01/06/2015	<u>43</u>	REPLY to Response to Motion re <u>23</u> MOTION to Dismiss <i>and, in the Alternative, Answer to Plaintiff's Complaint</i> filed by Maxor Pharmacy. (Vanderford, Michael) (Entered: 01/06/2015)
01/12/2015	<u>44</u>	MOTION for Default Judgment against Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Dotson, Floss, Hamilton, Horner, and Alva Green McDowell by Steven Pinder. (kdr) (Entered: 01/12/2015)
01/13/2015	<u>45</u>	ORDER denying as moot <u>44</u> Motion for Default Judgment. Signed by Magistrate Judge Beth Deere on 1/13/2015. (csf) (Entered: 01/13/2015)

01/16/2015	<u>46</u>	REPLY re <u>38</u> Answer to Amended Complaint by Steven Pinder. (kdr) (Entered: 01/16/2015)
01/16/2015	<u>47</u>	RESPONSE <u>39</u> MOTION to Vacate /Revoke Plaintiff's In Forma Pauperis Status filed by Steven Pinder. (kdr) (Entered: 01/16/2015)
01/16/2015	<u>48</u>	REPLY to Response re <u>36</u> MOTION for Temporary Restraining Order filed by Steven Pinder. (kdr) (Entered: 01/16/2015)
01/21/2015	<u>49</u>	ORDER granting <u>39</u> Motion to Vacate. Mr. Pinder has 30 days to submit the \$400 filing fee. His failure to comply with this Order will result in the dismissal of his claims, without prejudice. Signed by Magistrate Judge Beth Deere on 1/21/2015. (ks) (Entered: 01/21/2015)
01/28/2015	<u>50</u>	OBJECTION and APPEAL of Magistrate Judge Decision to District Court re <u>49</u> Order by Steven Pinder. (ljb) (Entered: 01/28/2015)
01/30/2015	<u>51</u>	ORDER denying Plaintiff's <u>50</u> Appeal of Magistrate Judge Deere's Order revoking Plaintiff's in forma pauperis appeal. Plaintiff has 30 days from the date of Judge Deere's opinion to submit the \$400 filing fee. Failure to comply with this Order will result in the dismissal of his claims without prejudice. Signed by Judge James M. Moody Jr. on 1/30/2015. (mcz) (Entered: 01/30/2015)
02/06/2015	<u>52</u>	Mail Returned Undeliverable as to Steven Pinder re <u>51</u> Order on Appeal of a Magistrate Judge Decision to District Court. (rhm) (Entered: 02/06/2015)
03/04/2015	<u>53</u>	MOTION for Ruling by Steven Pinder. (kdr) (Entered: 03/04/2015)
03/09/2015	<u>54</u>	ORDER denying as moot <u>53</u> Motion for Ruling. The Clerk of the Court is directed to provide Mr. Pinder a copy of <u>51</u> order. Mr. Pinder may have 30 days from the date of this Order to respond to the Court's <u>51</u> January 30, 2015 order. Signed by Magistrate Judge Beth Deere on 3/9/2015. (ks) (Entered: 03/09/2015)
03/13/2015	<u>55</u>	NOTICE OF APPEAL as to <u>51</u> Order, by Steven Pinder. (mcz) (Entered: 03/16/2015)
03/16/2015	<u>56</u>	Appellate Filing Fee Notice with IFP Application and calculation sheet issued to Plaintiff. Response due by 4/20/2015. (mcz) (Entered: 03/16/2015)
03/30/2015	<u>57</u>	MOTION for Leave to Appeal in forma pauperis, by Steven Pinder. (mcz) (Entered: 03/30/2015)
04/01/2015	<u>58</u>	ORDER denying Plaintiff's <u>57</u> Motion for Leave to Appeal in forma pauperis. Mr. Pinder must either pay to this Court the full \$505 appellate filing and docketing fee or file an application to proceed in forma pauperis with the United States Court of Appeals for the Eighth Circuit within 30 days. Signed by Judge James M. Moody Jr. on 4/1/2015. (mcz) (Entered: 04/01/2015)
04/01/2015	<u>59</u>	NOTIFICATION OF APPEAL and NOA SUPPLEMENT as to <u>55</u> Notice of Appeal filed by Steven Pinder re: <u>51</u> Order on Appeal of a <u>49</u> Magistrate Judge Decision. (mcz) (Entered: 04/01/2015)
04/10/2015	<u>60</u>	USCA Docketing Letter as to <u>55</u> Notice of Appeal filed by Steven Pinder. USCA Case Number 15-1721. (mcz) (Entered: 04/10/2015)

04/10/2015	<u>61</u>	ORDER of USCA as to <u>55</u> Notice of Appeal filed by Steven Pinder: The district court has determined that Appellant has three "strikes." Accordingly, Appellant may not proceed in this appeal without first paying the full \$505 appellate docketing fee. Appellant is directed to pay the fee to the United States District Court or file a pleading in this court explaining why Appellant is eligible to proceed without pre-payment of the fee. If appellant fails to pay the fee or respond to this order within 30 days of this order, the appeal will be dismissed. Compliance is due 5/11/2015. (mcz) (Entered: 04/10/2015)
04/13/2015	<u>62</u>	RECOMMENDED DISPOSITION recommending plaintiff's claims be dismissed based on his failure to comply with <u>54</u> Order; recommending <u>23</u> <u>25</u> <u>36</u> motions be denied as moot. Objections due within 14 days of the Recommendation. Signed by Magistrate Judge Beth Deere on 4/13/2015. (ks) (Entered: 04/13/2015)
04/20/2015	<u>63</u>	OBJECTION to <u>62</u> Report and Recommendations by Steven Pinder (tjb) (Entered: 04/20/2015)
04/20/2015	<u>64</u>	ORDER ADOPTING <u>62</u> Recommended Disposition. Mr. Pinder's claims are DISMISSED, without prejudice, based on his failure to comply with the Court's 3/9/2015 Order. The pending motions (docket entries <u>23</u> , <u>25</u> , and <u>36</u>) are DENIED, as moot. Signed by Judge James M. Moody Jr. on 4/20/2015. (mcz) (Entered: 04/20/2015)
04/20/2015	<u>65</u>	JUDGMENT: Consistent with <u>64</u> Order, this case is hereby DISMISSED, WITHOUT PREJUDICE. Signed by Judge James M. Moody Jr. on 4/20/2015. (mcz) (Entered: 04/20/2015)
05/06/2015	<u>66</u>	MOTION for Leave to Appeal in forma pauperis, by Steven Pinder. (mcz) (Entered: 05/06/2015)
05/06/2015	<u>67</u>	NOTICE OF APPEAL as to <u>64</u> Order and <u>65</u> Judgment, by Steven Pinder. (mcz) (Entered: 05/06/2015)
05/15/2015	<u>68</u>	ORDER denying Plaintiff's <u>66</u> Motion for Leave to Appeal in forma pauperis. Mr. Pinder must either pay to this Court the full \$505 appellate filing and docketing fee or file an application to proceed in forma pauperis with the United States Court of Appeals within 30 days. Signed by Judge James M. Moody Jr. on 5/15/2015. (mcz) (Entered: 05/15/2015)
05/15/2015	<u>69</u>	NOTIFICATION OF APPEAL and NOA SUPPLEMENT as to <u>67</u> Notice of Appeal filed by Steven Pinder re: <u>64</u> Order Adopting Report and Recommendations and <u>65</u> Judgment. (mcz) (Entered: 05/15/2015)
05/18/2015	<u>70</u>	USCA Docketing Letter as to <u>67</u> Notice of Appeal filed by Steven Pinder. USCA Case Number 15-2033. This appeal has been consolidated with previous appeal No. 5-1721. (mcz) (Entered: 05/18/2015)
05/27/2015	<u>71</u>	MOTION for Relief from <u>65</u> Judgment by Steven Pinder (mcz) (Entered: 05/27/2015)
05/29/2015	<u>72</u>	ORDER denying <u>71</u> Motion for Relief. Signed by Judge James M. Moody Jr. on 5/29/2015. (ks) (Entered: 05/29/2015)
06/03/2015	<u>73</u>	Amended NOTICE OF APPEAL as to <u>72</u> Order on Motion for Relief by Steven Pinder. (mcz) (Entered: 06/03/2015)

06/25/2015	<u>74</u>		MOTION for Copies, by Steven Pinder. (mcz) (Entered: 06/25/2015)
06/29/2015	<u>75</u>		(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>74</u> Motion for Copies. The clerk is directed to provide Plaintiff with a copy of docket entries 43, 52, 60, 61 and 70. Signed by Judge James M. Moody Jr. on 6/29/15. (amr) (Entered: 06/29/2015)
10/20/2015	<u>76</u>		MOTION for Relief from <u>65</u> Judgment, by Steven Pinder. (mcz) (Entered: 10/20/2015)
10/20/2015	<u>77</u>		BRIEF IN SUPPORT of <u>76</u> Motion for Relief from Judgment filed by Steven Pinder. (mcz) (Entered: 10/20/2015)
10/20/2015	<u>78</u>		MOTION for Copies, by Steven Pinder. (mcz) (Entered: 10/20/2015)
10/20/2015	<u>79</u>		ORDER denying Plaintiff's <u>76</u> Motion for Relief from Judgment. Signed by Judge James M. Moody Jr. on 10/20/2015. (mcz) (Entered: 10/20/2015)
10/21/2015	<u>80</u>		(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting in part and denying in part <u>78</u> Motion for Copies. The Clerk is directed to provide to the Plaintiff a copy of the docket sheet along with copies of docket entries 39, and 71. An additional copy of docket entry 70 was provided to Plaintiff on June 30, 2015, no additional copies will be provided free of charge. Signed by Judge James M. Moody Jr. on 10/21/15. (amr) (Entered: 10/21/2015)
10/29/2015	<u>81</u>		OPINION of USCA as to <u>55</u> and <u>67</u> Notices of Appeal and <u>73</u> Amended Notice of Appeal, filed by Steven Pinder. (mcz) (Entered: 10/29/2015)
10/29/2015	<u>82</u>		USCA JUDGMENT as to <u>55</u> and <u>67</u> Notices of Appeal and <u>73</u> Amended Notice of Appeal filed by Steven Pinder: The judgment of the district court in this cause is vacated and the cause is remanded to the district court for proceedings consistent with the opinion of this court. Appellant is assessed the full \$505 appellate filing and docketing fees. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. §1915(b). The court remands assessment and collection of those fees to the district court. Received from USCA via e-mail. (mcz) (Entered: 10/29/2015)
11/06/2015	<u>83</u>		MOTION to Hold Matter in Abeyance for 60 Days, by Steven Pinder. (mcz) (Entered: 11/06/2015)
11/19/2015	<u>84</u>		MANDATE of USCA in accordance with the judgment of 10/29/2015, as to <u>55</u> and <u>67</u> Notices of Appeal and <u>73</u> Amended Notice of Appeal filed by Steven Pinder. (mcz) (Entered: 11/19/2015)
11/19/2015	<u>85</u>		ORDER: This case is hereby referred to United States Magistrate Judge Beth Deere for all pre-trial matters. Signed by Judge James M. Moody Jr. on 11/19/2015. (ks) (Entered: 11/19/2015)
11/23/2015	<u>86</u>		MOTION to Take Deposition from Steven Pinder by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Dotson, Floss, Hamilton, Horner, Alva Green McDowell (Eubanks, Brent) (Entered: 11/23/2015)
11/23/2015	<u>87</u>		BRIEF IN SUPPORT re <u>86</u> Motion to Take Deposition filed by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Dotson,

		Floss, Hamilton, Horner, Alva Green McDowell. (Eubanks, Brent) (Entered: 11/23/2015)
11/30/2015	<u>88</u>	ORDER granting in part and denying in part <u>83</u> Motion for Order; granting <u>86</u> Motion to Take Deposition from Steven Pinder. This matter will be held in abeyance for 30 days. Defendants may not schedule Mr. Pinder's deposition while this matter is in abeyance. Signed by Magistrate Judge Beth Deere on 11/30/2015. (csf) (Entered: 11/30/2015)
02/04/2016	<u>89</u>	MOTION to Change a Party's Name by Steven Pinder. (ljb) (Entered: 02/04/2016)
02/11/2016	<u>90</u>	ORDER directing the Clerk to update the docket sheet to identify the John Doe defendant as Jorge Domenicis <u>89</u> ; the Clerk is directed to prepare a summons for defendant Domenicis and the US Marshal is directed to serve a copy of the complaint <u>2</u> and the amended complaint <u>13</u> along with any attachments and a summons for this defendant; service should be through Correct Care Solutions, without prepayment of fees and costs or posting security. Signed by Magistrate Judge Beth Deere on 2/11/16. (tjb) (Entered: 02/11/2016)
02/11/2016		Summons Issued as to Jorge Domenicis and forwarded to the US Marshal for service (tjb) (Entered: 02/11/2016)
02/23/2016	<u>91</u>	SUMMONS Returned Executed. Jorge Domenicis served on 2/18/2016. (mef) (Entered: 02/23/2016)
03/01/2016	<u>92</u>	NOTICE of Appearance by Brent Jay Eubanks on behalf of Jorge Domenicis (Eubanks, Brent) (Entered: 03/01/2016)
03/01/2016	<u>93</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Jorge Domenicis (Eubanks, Brent) (Entered: 03/01/2016)
03/01/2016	<u>94</u>	BRIEF IN SUPPORT re <u>93</u> Motion to Dismiss for Failure to State a Claim filed by Jorge Domenicis. (Eubanks, Brent) (Entered: 03/01/2016)
03/07/2016	<u>95</u>	PARTIAL RECOMMENDED DISPOSITION recommending Mr. Pinder's claims against Jane Doe be dismissed without prejudice because she was not served with process within the time allowed by the Rules <u>2</u> ; Objections due within 14 days of this Recommendation. Signed by Magistrate Judge Beth Deere on 3/7/16. (tjb) (Docket text modified on 3/7/2016 to correct the description of the document).(jak) (Entered: 03/07/2016)
03/07/2016		NOTICE OF DOCKET CORRECTION re <u>95</u> PARTIAL RECOMMENDED DISPOSITION. CORRECTION: The docket text was modified to correct the description of the document filed as "PARTIAL RECOMMENDED DISPOSITION recommending Mr. Pinder's claims against Jane Doe be dismissed without prejudice because she was not served with process within the time allowed by the Rules <u>2</u> ; Objections due within 14 days of this Recommendation". (jak) (Entered: 03/07/2016)
03/08/2016	<u>96</u>	RESPONSE to <u>93</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Steven Pinder. (kdr) (Entered: 03/08/2016)
03/16/2016	<u>97</u>	NOTICE of Change of Address by Steven Pinder (tjb) (Entered: 03/16/2016)

03/29/2016	<u>98</u>		ORDER ADOPTING <u>95</u> Partial Recommended Disposition. Mr. Pinder's claims against Defendant Jane Doe are DISMISSED, without prejudice. Signed by Judge James M. Moody Jr. on 3/29/2016. (mcz) (Entered: 03/29/2016)
03/31/2016	<u>99</u>		REQUEST FOR INJUNCTION AND SUPPLEMENTAL COMPLAINT filed by Steven Pinder <u>13</u> . (tjb) (Entered: 03/31/2016)
03/31/2016	<u>100</u>		PARTIAL RECOMMENDED DISPOSITION directing the Clerk of the Court to update the docket sheet to reflect the correct spelling of defendant Jorge Dominicis's name; recommending that defendant Dominicis's motion to dismiss be denied as moot and that Mr. Pinder's response to the motion to dismiss be filed as a supplement to the amended complaint <u>93</u> ; Objections due within 14 days of this Recommendation. Signed by Magistrate Judge Beth Deere on 3/31/16. (tjb) (Entered: 03/31/2016)
04/13/2016	<u>101</u>		ANSWER to <u>2</u> Complaint , <i>Amended Complaint and Supplemental Complaint(s)</i> by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell.(Eubanks, Brent) (Entered: 04/13/2016)
04/14/2016	<u>102</u>		RESPONSE re <u>99</u> Addendum (<i>Plaintiff's Motion for Preliminary Injunction, DE# 99</i>) by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell (Attachments: # <u>1</u> Exhibit A – Plaintiff's Drug Prescription Order)(Eubanks, Brent) (Entered: 04/14/2016)
04/15/2016	<u>103</u>		ORDER ADOPTING <u>100</u> Partial Report and Recommendations. Defendant Dominicis's <u>93</u> Motion to Dismiss is DENIED, as moot. Mr. Pinder's <u>96</u> Response is to be filed as a supplement to the amended complaint. Signed by Judge James M. Moody Jr. on 4/15/2016. (mcz) (Entered: 04/15/2016)
04/15/2016	<u>104</u>		ANSWER to <u>105</u> Supplement to Amended Complaint by Maxor Pharmacy.(Vanderford, Michael) (Docket entry modified on 4/19/2016 to correct the linkage.) (thd). (Entered: 04/15/2016)
04/15/2016	<u>105</u>		SUPPLEMENT filed by Steven Pinder to <u>13</u> Amended Complaint. Filed pursuant to <u>103</u> Order. (mcz) (Entered: 04/15/2016)
04/15/2016	<u>106</u>		ANSWER to <u>2</u> Complaint <i>and Supplement to Complaint</i> <u>105</u> by Roy Griffin, William Straughn.(Lyford, Charles) (Entered: 04/15/2016)
04/19/2016			NOTICE OF DOCKET CORRECTION re: <u>104</u> Answer. CORRECTION: The docket entry was modified to correct the linkage as follows: "Answer to <u>105</u> Supplement to Amended Complaint." (thd) (Entered: 04/19/2016)
04/25/2016	<u>107</u>		REPLY re <u>102</u> Response, by Steven Pinder. (kdr) (Entered: 04/25/2016)
04/25/2016	<u>108</u>		BRIEF IN SUPPORT re <u>107</u> Reply (Non Motion) filed by Steven Pinder. (kdr) (Entered: 04/25/2016)
04/28/2016	<u>109</u>		Objection re <u>102</u> Response (Non Motion), by Steven Pinder. (kdr) (Entered: 04/28/2016)
04/28/2016	<u>110</u>		REPLY re <u>106</u> Answer to Complaint by Steven Pinder. (kdr) (Entered: 04/28/2016)

04/28/2016	<u>111</u>		REPLY re <u>101</u> Answer to Complaint, by Steven Pinder. (kdr) (Entered: 04/28/2016)
04/28/2016	<u>112</u>		NOTICE, CONSENT AND REFERENCE to a Magistrate Judge forwarded by the Clerk of Court. (csf) (Entered: 04/28/2016)
04/28/2016	<u>113</u>		INITIAL SCHEDULING ORDER: Any failure-to-exhaust defense must be raised by motion for summary judgment by 6/13/2016; discovery deadline is 9/26/2016; summary judgment motions on the merits due by 10/11/2016. Signed by Magistrate Judge Beth Deere on 4/28/2016. (csf) (Entered: 04/28/2016)
06/13/2016	<u>114</u>		MOTION for Summary Judgment <i>on the Issue of Exhaustion</i> by Roy Griffin, William Straughn (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Affidavit)(Lyford, Charles) (Entered: 06/13/2016)
06/13/2016	<u>115</u>		STATEMENT OF FACTS (Local Rule 56.1) re <u>114</u> Motion for Summary Judgment <i>on the Issue of Exhaustion</i> filed by Roy Griffin, William Straughn. (Lyford, Charles) (Entered: 06/13/2016)
06/13/2016	<u>116</u>		BRIEF IN SUPPORT re <u>114</u> Motion for Summary Judgment <i>on the Issue of Exhaustion</i> filed by Roy Griffin, William Straughn. (Lyford, Charles) (Entered: 06/13/2016)
06/13/2016	<u>117</u>		MOTION for Summary Judgment by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell (Eubanks, Brent) (Entered: 06/13/2016)
06/13/2016	<u>118</u>		BRIEF IN SUPPORT re <u>117</u> Motion for Summary Judgment filed by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell. (Eubanks, Brent) (Entered: 06/13/2016)
06/13/2016	<u>119</u>		STATEMENT OF FACTS (Local Rule 56.1) re <u>117</u> Motion for Summary Judgment, <u>118</u> Brief in Support filed by Boston, Correct Care Services, Jorge Dominicis, Dotson, Floss, Hamilton, Horner. (Attachments: # <u>1</u> Exhibit A – ADMIN DIRECTIVE 10–32, # <u>2</u> Exhibit B – ADMIN DIRECTIVE 12–16, # <u>3</u> Exhibit C – ADMIN DIRECTIVE 14–16, # <u>4</u> Exhibit D – PLAINTIFF'S RELEVANT GRIEVANCE RECORDS, # <u>5</u> Exhibit E – DECLARATION OF SHELLY BYERS)(Eubanks, Brent) (Entered: 06/13/2016)
06/13/2016	<u>120</u>		MOTION for Summary Judgment <i>ON THE ISSUE OF EXHAUSTION</i> by Maxor Pharmacy (Vanderford, Michael) (Entered: 06/13/2016)
06/13/2016	<u>121</u>		BRIEF IN SUPPORT re <u>120</u> Motion for Summary Judgment <i>ON THE ISSUE OF EXHAUSTION</i> filed by Maxor Pharmacy. (Vanderford, Michael) (Entered: 06/13/2016)
06/17/2016	<u>122</u>		ORDER advising Mr. Pinder he has 14 days to respond to the pending motions for summary judgment <u>114</u> , <u>117</u> , and <u>120</u> . Signed by Magistrate Judge Beth Deere on 6/17/16. (tjb) (Entered: 06/17/2016)
07/05/2016	<u>123</u>		RESPONSE in Opposition to <u>114</u> , <u>117</u> , and <u>120</u> Motions for Summary Judgment filed by Steven Pinder. (ljb) (Entered: 07/05/2016)

07/05/2016	<u>124</u>	BRIEF IN SUPPORT of <u>123</u> Response in Opposition to Motion filed by Steven Pinder. (ljb) (Entered: 07/05/2016)
07/05/2016	<u>125</u>	STATEMENT OF DISPUTED FACTS re <u>123</u> Response in Opposition to Motion filed by Steven Pinder. (ljb) (Entered: 07/05/2016)
07/06/2016	<u>126</u>	MOTION for a copy of the docket sheet by Steven Pinder (tjb) (Entered: 07/06/2016)
07/06/2016	<u>127</u>	MOTION to Appoint Counsel by Steven Pinder (tjb) (Entered: 07/06/2016)
07/06/2016	<u>128</u>	MEMORANDUM OF LAW IN SUPPORT re <u>127</u> Motion to Appoint Counsel filed by Steven Pinder. (tjb) (Entered: 07/06/2016)
07/06/2016	<u>129</u>	DECLARATION by Steven Pinder re <u>127</u> Motion to Appoint Counsel (tjb) (Entered: 07/06/2016)
07/06/2016	<u>130</u>	ORDER granting <u>126</u> Plaintiff's motion for a copy of the docket sheet; directing the Clerk of the Court to send Mr. Pinder a copy of the docket sheet and this order; and denying <u>127</u> motion for court-appointed counsel. Signed by Magistrate Judge Beth Deere on 7/6/2016. (mef) (Entered: 07/06/2016)
07/12/2016	<u>131</u>	REPLY to Response to Motion re <u>117</u> MOTION for Summary Judgment filed by Boston, Correct Care Services, Jorge Dominicis, Dotson, Floss, Hamilton, Horner. (Eubanks, Brent) (Entered: 07/12/2016)
07/19/2016	<u>132</u>	MOTION for Subpoenas by Steven Pinder. (kdr) (Entered: 07/19/2016)
07/19/2016	<u>133</u>	REPLY to Response to Motion re <u>117</u> MOTION for Summary Judgment filed by Steven Pinder. (kdr) (Entered: 07/19/2016)
07/19/2016	<u>134</u>	ORDER denying <u>132</u> Motion for blank subpoenas duces tecum. Signed by Magistrate Judge Beth Deere on 7/19/2016. (csf) (Entered: 07/19/2016)
07/26/2016	<u>135</u>	PARTIAL RECOMMENDED DISPOSITION recommending the pending motions for summary judgment <u>117</u> , <u>114</u> , and <u>120</u> be denied; Objections due within 14 days of this Recommendation. Signed by Magistrate Judge Beth Deere on 7/26/16. (tjb) (Entered: 07/26/2016)
08/05/2016	<u>136</u>	OBJECTION to <u>135</u> Report and Recommendations by Boston, Correct Care Services, Jorge Dominicis, Dotson, Floss, Hamilton, Horner (Eubanks, Brent) (Entered: 08/05/2016)
08/08/2016	<u>137</u>	ORDER ADOPTING <u>135</u> Partial Recommended Disposition. The pending motions for summary judgment, <u>114</u> , <u>117</u> , and <u>120</u> are DENIED. Signed by Judge James M. Moody Jr. on 8/8/2016. (mcz) (Entered: 08/08/2016)
08/15/2016	<u>138</u>	MOTION to Compel by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell (Attachments: # <u>1</u> Exhibit Exhibit A – LTR with Discovery, # <u>2</u> Exhibit Exhibit B – Good Faith LTR, # <u>3</u> Exhibit Exhibit C – Plaintiff's RSP to Discovery, # <u>4</u> Exhibit Exhibit D – Deposition Transcript)(Eubanks, Brent) (Entered: 08/15/2016)
08/15/2016	<u>139</u>	BRIEF IN SUPPORT re <u>138</u> Motion to Compel, filed by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell. (Eubanks, Brent)

		(Entered: 08/15/2016)
08/16/2016	<u>140</u>	ORDER granting in part <u>138</u> Medical Defendants' motion to compel. Mr. Pinder has 30 days from the date of this order to complete a HIPAA-compliant medical authorization and to provide that authorization to counsel for the Medical Defendants. Failure to comply with this Court's order could result in the dismissal of this lawsuit without prejudice. Signed by Magistrate Judge Beth Deere on 8/16/2016. (mef) (Entered: 08/16/2016)
08/22/2016	<u>141</u>	RESPONSE to <u>138</u> MOTION to Compel filed by Steven Pinder. (kdr) (Entered: 08/22/2016)
08/26/2016	<u>142</u>	RESPONSE re <u>140</u> Order on Motion to Compel, by Steven Pinder. (kdr) (Entered: 08/26/2016)
08/26/2016	<u>143</u>	MOTION for Issuance of Subpoenas by Steven Pinder. (kdr) (Entered: 08/26/2016)
08/29/2016	<u>144</u>	ORDER granting <u>143</u> Motion for issuance of subpoena. The Clerk is instructed to prepare a subpoena duces tecum to the Records Custodian, Jones Eye Institute, UAMS, Dept. of Ophthalmology, 4301 W. Markham St., Little Rock, AR 72205 for the production of Mr. Pinder's medical records from March 2013 to the present date. The U.S. Marshal is instructed to serve the subpoena on Mr. Pinder's behalf, without requiring prepayment of costs or security. These documents may be produced to the Court on or before 9/19/2016 through the United States Mail. Signed by Magistrate Judge Beth Deere on 8/29/2016. (csf) (Entered: 08/29/2016)
08/29/2016		Remark, Subpoena Duces Tecum issued to Records Custodian, Jones Eye Institute, pursuant to <u>144</u> Order and forwarded to U. S. Marshal for service (csf) (Entered: 08/29/2016)
09/07/2016	<u>145</u>	Subpoena Duces Tecum returned executed on 9/6/2016. (scw) (Entered: 09/08/2016)
09/09/2016	<u>146</u>	MOTION to Compel Discovery filed by Steven Pinder. (mef) (Entered: 09/09/2016)
09/09/2016	<u>147</u>	BRIEF IN SUPPORT re <u>146</u> Motion to Compel filed by Steven Pinder. (mef) (Entered: 09/09/2016)
09/09/2016	<u>148</u>	DECLARATION in Support of <u>146</u> Motion to Compel filed by Steven Pinder. (mef) (Entered: 09/09/2016)
09/09/2016	<u>149</u>	MOTION to Clarify <u>144</u> Order filed by Steven Pinder. (mef) (Entered: 09/09/2016)
09/09/2016	<u>150</u>	NOTICE of Filing of Authorization to Disclose Health Information by Steven Pinder. (mef) (Entered: 09/09/2016)
09/14/2016	<u>151</u>	ORDER granting <u>149</u> Motion to Clarify. After the Court receives the medical records at issue, the Court will provide copies to Mr. Pinder. Signed by Magistrate Judge Beth Deere on 9/14/2016. (csf) (Entered: 09/14/2016)
09/19/2016	<u>152</u>	MOTION for Preliminary Injunction by Steven Pinder. (kdr) (Entered: 09/19/2016)

09/19/2016	<u>153</u>		BRIEF IN SUPPORT re <u>152</u> Motion for Preliminary Injunction filed by Steven Pinder. (kdr) (Entered: 09/19/2016)
09/19/2016	<u>154</u>		DECLARATION in Support re <u>152</u> Motion for Preliminary Injunction filed by Steven Pinder. (kdr) (Entered: 09/19/2016)
09/20/2016	<u>155</u>		ORDER, the Medical Defendants are instructed to notify the Court within 14 days whether the <u>150</u> authorization by Mr. Pinder is a HIPAA-compliant medical authorization and whether it allows the Medical Defendants appropriate access to Mr. Pinder's relevant medical information. The Clerk of Court is directed to file the medical records, produced under subpoena per <u>144</u> Order, under seal. Signed by Magistrate Judge Beth Deere on 9/20/2016. (csf) (Docket text modified on 9/21/2016 to correct a typographical error).(jak) (Entered: 09/20/2016)
09/20/2016	<u>156</u>		SEALED DOCUMENT. (mef) (Entered: 09/21/2016)
09/22/2016	<u>157</u>		NOTICE by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell re <u>155</u> Order., <i>Response to the Court's September 20, 2016, Order</i> (Eubanks, Brent) (Entered: 09/22/2016)
09/22/2016	<u>158</u>		MOTION for Sanctions by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell (Eubanks, Brent) (Entered: 09/22/2016)
09/22/2016	<u>159</u>		BRIEF IN SUPPORT re <u>158</u> Motion for Sanctions filed by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell. (Eubanks, Brent) (Entered: 09/22/2016)
09/23/2016	<u>160</u>		MOTION for Summary Judgment by Maxor Pharmacy (Vanderford, Michael) (Entered: 09/23/2016)
09/23/2016	<u>161</u>		BRIEF IN SUPPORT re <u>160</u> Motion for Summary Judgment filed by Maxor Pharmacy. (Vanderford, Michael) (Entered: 09/23/2016)
09/23/2016	<u>162</u>		STATEMENT OF FACTS (Local Rule 56.1) re <u>160</u> Motion for Summary Judgment filed by Maxor Pharmacy. (Vanderford, Michael) (Entered: 09/23/2016)
09/23/2016	<u>163</u>		RESPONSE in Opposition re <u>146</u> MOTION to Compel filed by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell. (Attachments: # <u>1</u> Exhibit "A", Affidavit of Monica Fryar)(Eubanks, Brent) (Entered: 09/23/2016)
09/26/2016	<u>164</u>		ORDER, Mr. Pinder has 14 days from date of this Order to file a response to <u>160</u> MOTION for Summary Judgment filed by Maxor Pharmacy. Signed by Magistrate Judge Beth Deere on 9/26/2016. (csf) (Entered: 09/26/2016)
09/28/2016	<u>165</u>		RESPONSE to <u>158</u> MOTION for Sanctions filed by Steven Pinder. (kdr) (Entered: 09/28/2016)
09/29/2016	<u>166</u>		RESPONSE in Opposition re <u>152</u> MOTION for Preliminary Injunction filed by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers,

		Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell. (Eubanks, Brent) (Entered: 09/29/2016)
09/30/2016	<u>167</u>	RESPONSE re <u>164</u> Order by Steven Pinder. (mef) (Entered: 09/30/2016)
10/04/2016	<u>168</u>	ORDER, the Clerk of Court is directed to send Mr. Pinder a copy of <u>160</u> MOTION for Summary Judgment filed by Maxor Pharmacy, <u>161</u> Brief in Support, and <u>162</u> Statement of Undisputed Facts. If Mr. Pinder wishes to respond to Maxor's motion, he must do so on or before 10/20/2016. Signed by Magistrate Judge Beth Deere on 10/4/2016. (csf) (Entered: 10/04/2016)
10/06/2016	<u>169</u>	RESPONSE to <u>160</u> MOTION for Summary Judgment filed by Steven Pinder. (kdr) (Entered: 10/06/2016)
10/06/2016	<u>170</u>	BRIEF IN SUPPORT re <u>169</u> Response to Motion filed by Steven Pinder. (kdr) (Entered: 10/06/2016)
10/06/2016	<u>171</u>	STATEMENT OF DISPUTED FACTS (Local Rule 56.1) re <u>169</u> Response to Motion filed by Steven Pinder. (kdr) (Entered: 10/06/2016)
10/10/2016	<u>172</u>	MOTION for Extension of Time to File <i>Dispositive Motion</i> by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis–Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell (Eubanks, Brent) (Entered: 10/10/2016)
10/11/2016	<u>173</u>	ORDER granting <u>172</u> Motion for Extension of Time. If Mr. Pinder completes a HIPAA compliant medical authorization, the Medical Defendants will have 90 days from that date to file a dispositive motion. Signed by Magistrate Judge Beth Deere on 10/11/2016. (csf) (Entered: 10/11/2016)
10/11/2016	<u>174</u>	MOTION for Summary Judgment by Roy Griffin, William Straughn (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Affidavit, # <u>7</u> Exhibit, # <u>8</u> Affidavit, # <u>9</u> Affidavit, # <u>10</u> Exhibit)(Lyford, Charles) (Entered: 10/11/2016)
10/11/2016	<u>175</u>	STATEMENT OF FACTS (Local Rule 56.1) re <u>174</u> Motion for Summary Judgment, filed by Roy Griffin, William Straughn. (Lyford, Charles) (Entered: 10/11/2016)
10/11/2016	<u>176</u>	BRIEF IN SUPPORT re <u>174</u> Motion for Summary Judgment, filed by Roy Griffin, William Straughn. (Lyford, Charles) (Entered: 10/11/2016)
10/12/2016	<u>177</u>	RENEWED MOTION to Compel Discovery by Steven Pinder. (ljb) (Entered: 10/12/2016)
10/19/2016	<u>178</u>	MOTION for Copies by Steven Pinder. (kdr) (Entered: 10/19/2016)
10/20/2016	<u>179</u>	ORDER granting <u>178</u> Mr. Pinder's motion for copies and for additional time to respond to the motion; and directing the Clerk of the Court to send Mr. Pinder copies of docket entries <u>160</u> , <u>161</u> , and <u>162</u> along with a copy of this Order. If Mr. Pinder wishes to respond to Maxor's motion, he must do so on or before 11/7/2016. Signed by Magistrate Judge Beth Deere on 10/20/2016. (mef) (Entered: 10/20/2016)
10/24/2016	<u>180</u>	RESPONSE in Opposition to <u>174</u> Motion for Summary Judgment filed by Steven Pinder. (mef) (Entered: 10/24/2016)

10/24/2016	<u>181</u>	STATEMENT OF FACTS (Local Rule 56.1) re <u>180</u> Response in Opposition to Motion filed by Steven Pinder. (kdr) (Entered: 10/24/2016)
10/24/2016	<u>182</u>	DECLARATION re <u>180</u> Response in Opposition to Motion filed by Steven Pinder. (kdr) (Entered: 10/24/2016)
11/01/2016	<u>183</u>	REPLY to Response to Motion re <u>174</u> MOTION for Summary Judgment filed by Roy Griffin, William Straughn. (Lyford, Charles) (Entered: 11/01/2016)
11/02/2016	<u>184</u>	REVISED RESPONSE in Opposition to <u>160</u> Motion for Summary Judgment filed by Steven Pinder. (ljb) (Entered: 11/02/2016)
11/02/2016	<u>185</u>	BRIEF IN SUPPORT of <u>184</u> Revised Response in Opposition to Motion filed by Steven Pinder. (ljb) (Entered: 11/02/2016)
11/02/2016	<u>186</u>	REVISED STATEMENT OF FACTS re <u>184</u> Revised Response filed by Steven Pinder. (ljb) (Entered: 11/02/2016)
11/09/2016	<u>187</u>	MOTION for Partial Summary Judgment by Steven Pinder. (kdr) (Entered: 11/09/2016)
11/09/2016	<u>188</u>	BRIEF IN SUPPORT re <u>187</u> Motion for Partial Summary Judgment filed by Steven Pinder. (kdr) (Entered: 11/09/2016)
11/09/2016	<u>189</u>	STATEMENT OF FACTS (Local Rule 56.1) re <u>187</u> Motion for Partial Summary Judgment filed by Steven Pinder. (kdr) (Entered: 11/09/2016)
11/23/2016	<u>190</u>	RESPONSE in Opposition re <u>187</u> MOTION for Partial Summary Judgment filed by William Straughn. (Lyford, Charles) (Entered: 11/23/2016)
11/23/2016	<u>191</u>	STATEMENT OF FACTS (Local Rule 56.1) re <u>190</u> Response in Opposition to Motion filed by William Straughn. (Lyford, Charles) (Entered: 11/23/2016)
11/23/2016	<u>192</u>	BRIEF IN SUPPORT re <u>190</u> Response in Opposition to Motion filed by William Straughn. (Lyford, Charles) (Entered: 11/23/2016)
12/05/2016	<u>193</u>	NOTICE of Filing of Amended Health Insurance Portability and Accountability Act Authorization to Disclose Health Information by Steven Pinder. (kdr) (Entered: 12/05/2016)
12/07/2016	<u>194</u>	PUBLIC NOTICE: Effective immediately the Pine Bluff Division will be an unstaffed office. Entered by the Clerk of Court on 12/07/2016. (rh) (Entered: 12/07/2016)
12/08/2016	<u>195</u>	SUPPLEMENT to <u>162</u> STATEMENT OF FACTS (Local Rule 56.1) filed by Maxor Pharmacy. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Vanderford, Michael) (Docket text modified on 12/9/2016 to correct the description of the document filed). (jak) (Entered: 12/08/2016)
12/09/2016		NOTICE OF DOCKET CORRECTION re <u>195</u> Statement of Facts. CORRECTION: The docket text was modified to correct the description of the document filed as "SUPPLEMENT to <u>162</u> Statement of Facts" as marked on the document. (jak) (Entered: 12/09/2016)
01/01/2017	<u>196</u>	NOTICE by Boston, Jacqueline Carswell, Correct Care Services, Sonya Davis-Peppers, Jorge Dominicis, Dotson, Floss, Hamilton, Horner, Alva Green McDowell re <u>193</u> Notice (Other) (Eubanks, Brent) (Entered: 01/01/2017)

			01/01/2017)
01/10/2017	<u>197</u>		NOTICE of Appearance by Amber R. Schubert on behalf of Roy Griffin, William Straughn (Schubert, Amber) (Entered: 01/10/2017)
01/10/2017	<u>198</u>		MOTION to Substitute Attorney by Roy Griffin, William Straughn (Schubert, Amber) (Entered: 01/10/2017)
01/12/2017	<u>199</u>		RESPONSE to <u>196</u> Notice filed by Steven Pinder. (mef) (Entered: 01/12/2017)
01/12/2017	<u>200</u>		ORDER granting <u>198</u> motion to substitute counsel; relieving Charles W. Lyford; and substituting Amber R. Schubert as attorney of record for the Defendants. Signed by Magistrate Judge Beth Deere on 1/12/2017. (mef) (Entered: 01/12/2017)
01/17/2017	<u>201</u>		MOTION for Preliminary Injunction by Steven Pinder. (ljb) (Entered: 01/17/2017)
01/17/2017	<u>202</u>		MEMORANDUM of Law in Support of <u>201</u> Motion for Preliminary Injunction filed by Steven Pinder. (ljb) (Entered: 01/17/2017)
01/17/2017	<u>203</u>		MOTION to Amend the <u>2</u> Complaint by Steven Pinder. (ljb) (Entered: 01/17/2017)
01/19/2017	<u>204</u>		ORDER denying <u>203</u> Motion to Amend Complaint. Signed by Magistrate Judge Beth Deere on 1/19/2017. (csf) (Entered: 01/19/2017)
01/27/2017	<u>205</u>		RESPONSE in Opposition re <u>201</u> MOTION for Preliminary Injunction filed by Roy Griffin, William Straughn. (Schubert, Amber) (Entered: 01/27/2017)
01/27/2017	<u>206</u>	20	RECOMMENDED DISPOSITION recommending that the <u>160</u> <u>174</u> motions for summary judgment filed by Maxor Pharmacy and the ADC Defendants be granted; Mr. Pinder's claims against Maxor Pharmacy and the ADC Defendants be dismissed, with prejudice; <u>158</u> the Medical Defendants' motion for sanctions be granted; Mr. Pinder's claims against the Medical Defendants be dismissed, without prejudice; and <u>146</u> <u>152</u> <u>177</u> <u>187</u> <u>201</u> Mr. Pinder's pending motions be denied, as moot. Objections due within 14 days of this Recommendation. Signed by Magistrate Judge Beth Deere on 1/27/2017. (kdr) (Entered: 01/27/2017)
02/07/2017	<u>207</u>		OBJECTION to <u>206</u> Report and Recommendations by Steven Pinder. (kdr) (Entered: 02/07/2017)
02/09/2017	<u>208</u>	35	ORDER approving and adopting the <u>206</u> Recommended Disposition as this Court's findings in all respects; denying as moot Mr. Pinder's <u>146</u> , <u>152</u> , <u>177</u> , and <u>187</u> motions; granting <u>160</u> and <u>174</u> motions for summary judgment; and granting <u>158</u> motion for sanctions. Mr. Pinder's claims against Maxor Pharmacy and the ADC Defendants are dismissed, with prejudice. Signed by Judge James M. Moody Jr. on 2/9/2017. (ljb) (Entered: 02/09/2017)
02/09/2017	<u>209</u>	36	JUDGMENT Consistent with the <u>208</u> Order entered on this day, this case is hereby dismissed. Signed by Judge James M. Moody Jr. on 2/9/2017. (mcz) (Entered: 02/09/2017)
02/09/2017	<u>210</u>		APPELLATE FILING FEE NOTICE to Plaintiff. (mcz) (Entered: 02/09/2017)

02/28/2017	<u>211</u>	37	NOTICE OF APPEAL as to <u>208</u> Order Adopting Report and Recommendations, and <u>209</u> Judgment, by Steven Pinder. (fcd) (Entered: 02/28/2017)
02/28/2017	<u>212</u>		MOTION for Leave to Appeal in forma pauperis by Steven Pinder. (fcd) (Entered: 02/28/2017)
02/28/2017	<u>213</u>		DECLARATION of Imminent Danger by Steven Pinder. (mcz) (Entered: 02/28/2017)
03/08/2017	<u>214</u>	40	ORDER granting the <u>212</u> motion for leave to appeal in forma pauperis; directing an initial partial filing fee of \$3.69 be collected from Mr. Pinder's prison trust account and monthly payments thereafter until the entire \$505.00 appellate filing fee is paid in full; and directing the Clerk of Court to send a copy of this Order to the Warden of the Varner Unit, the ADC Trust Fund Centralized Banking Office, and the ADC Compliance Office. Signed by Judge James M. Moody Jr. on 3/8/2017. (ljb) (Entered: 03/08/2017)
03/08/2017	<u>215</u>	42	NOTIFICATION OF APPEAL and NOA SUPPLEMENT as to <u>211</u> Notice of Appeal filed by Steven Pinder re: <u>208</u> Order and <u>209</u> Judgment. (mcz) (Entered: 03/08/2017)

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**STEVEN PINDER
ADC #123397**

PLAINTIFF

V. CASE NO. 5:14-CV-359-JM-BD

ALVA GREEN McDOWELL, et al.

DEFENDANTS

RECOMMENDED DISPOSITION

I. Procedures for Filing Objections

This Recommended Disposition (“Recommendation”) has been sent to Judge James M. Moody Jr. You may file written objections to this Recommendation. If you file objections, they must be specific and must include the factual or legal basis for your objection. Your objections must be received in the office of the United States District Court Clerk within fourteen (14) days of this Recommendation.

If no objections are filed, Judge Moody can adopt this Recommendation without independently reviewing the record. By not objecting, you may also waive any right to appeal questions of fact

II. Background

Steven Pinder, an Arkansas Department of Correction (“ADC”) inmate, filed this lawsuit pro se under 42 U.S.C. § 1983, alleging that Defendants acted with deliberate indifference to his serious medical needs and violated his first amendment rights.

(Docket entries #2, #13) The Court initially allowed Mr. Pinder to proceed *in forma pauperis* (IFP), but later revoked his IFP status after determining that he had failed to

sufficiently allege that he was in imminent danger of serious physical harm so as to be exempt from the “three strikes” rule. (#49) After Mr. Pinder failed to timely submit the statutory filing fee, the Court dismissed Mr. Pinder’s claims, without prejudice. (#64) Mr. Pinder appealed the Court’s decision.¹

On appeal, the Court of Appeals for the Eighth Circuit granted Mr. Pinder leave to proceed IFP, vacated this Court’s orders, and remanded the case for further proceedings. Specifically, the Court stated, “we vacate the district court’s orders and remand for the review of the merits of the entire amended complaint.” (#81 at p.3) (emphasis added)

The ADC Defendants, the Medical Defendants², and Maxor Pharmacy moved for summary judgment on Mr. Pinder’s claims against them, arguing that he had failed to exhaust his administrative remedies. (#114, #117, #120) The Court, however, denied the motions based on the explicit instructions of the Court of Appeals. (#137)

Separate Defendant Maxor Correctional Pharmacy Services (“Maxor”) and the ADC Defendants have now moved for summary judgment on the merits of Mr. Pinder’s claims. (#160, #174) Mr. Pinder has responded to the motions. (#169, #170, #171, #180, #181, #182, #184, #185, #186) In addition, the Medical Defendants have moved to dismiss Mr. Pinder’s claims based on his failure to complete a Health Insurance

¹ Mr. Pinder also appealed the Court’s finding that he was a “three striker” under the Prison Litigation Reform Act.

² The Medical Defendants’ motion was a motion for partial summary judgment, rather than a motion for summary judgment. (#117)

Portability and Accountability Act (HIPAA) medical authorization. (#158) Mr. Pinder also has filed a motion for partial summary judgment, two motions to compel, and two motions for preliminary injunctive relief. (#187, #146, #177, #152, #201)

Based on the evidence in the record, the Court recommends that the Defendants' pending motions for summary judgment (#160, #174) be GRANTED. Mr. Pinder's claims against Maxor, as well as those against the ADC Defendants, should be DISMISSED, with prejudice.³ In addition, the Medical Defendants' motion for sanctions (#158) should be GRANTED. Mr. Pinder's claims against the Medical Defendants should be DISMISSED, without prejudice. Finally, Mr. Pinder's pending motions (#187, #146, #177, #152, #201) should be DENIED, as moot.

III. Discussion

A. Defendants' Motions for Summary Judgment

1. Standard

Summary judgment is appropriate only when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no real dispute about the facts that are important to the outcome of the case. FED.R.CIV.P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 246, 106 S.Ct. 2505 (1986).

³ Mr. Pinder asserts additional claims in his response to the ADC Defendants' motion for summary judgment. Because these claims were raised for the first time in the response and are not included in this lawsuit, the Court will not address those claims in this Recommendation.

2. Maxor Correctional Pharmacy Services

Maxor is a mail-order pharmacy and distributor of pharmaceutical services and supplies to Correct Care Services. On April 7, 2014, Maxor began providing pharmaceutical services and supplies to the Tucker Unit of the ADC. (#195-1 at p.1)

Between April 7, 2014, and the date that Mr. Pinder filed this lawsuit, September 26, 2014, Mr. Pinder filed two medical grievances related to his prescription medications. (#195-2) Mr. Pinder has conceded that his only claim against Maxor relates to Maxor's administration of his glaucoma medication. (#195-4 at p.11)

In their motion for summary judgment, Maxor first argues that, although Correct Care Services is a state actor for purposes of liability under 42 U.S.C. § 1983, it is not. At this time, the Eighth Circuit has not so ruled. Accordingly, for purposes of this motion, the Court will assume that Maxor is a state actor.

Maxor, however, is s a private corporation. "A corporation acting under color of state law will only be held liable under § 1983 for its own unconstitutional policies." *Crumpley-Patterson v. Trinity Lutheran Hosp.*, 388 F.3d 588, 590 (8th Cir. 2004) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690, 98 S.Ct. 2018 (1978)). To prove a policy, custom or action, Mr. Pinder must prove "a continuing, widespread, persistent pattern of unconstitutional misconduct" by Maxor's employees; "[d]eliberate indifference to or tacit authorization of such conduct by [Maxor's] policymaking officials after notice to the officials of that misconduct;" and that he "was injured by acts pursuant to

[Maxor's] custom, *i.e.*, that the custom was the moving force behind the constitutional violation.” *S.J. v. Kansas City Mo. Pub. Sch. Dist.*, 294 F.3d 1025, 1028 (8th Cir. 2002) (internal quotations and citations omitted).

Here, Mr. Pinder has failed to come forward with any evidence of an unconstitutional policy, custom, or action by Maxor. Rather, Mr. Pinder claims that he went several days without glaucoma medication on several different occasions. (#195-4 at p.11)

Further, Mr. Pinder has failed to present any evidence showing that any delay on the part of Maxor was intentional or deliberately indifferent. Negligence, even gross negligence, will not support a constitutional claim for deliberate indifference. *Langford v. Norris*, 614 F.3d 445, 460 (8th Cir. 2010) (plaintiff must show more than even gross negligence). Without such evidence, Mr. Pinder has failed to create any genuine question of material fact that would preclude summary judgment in favor of Maxor.

3. ADC Defendants' Motion for Summary Judgment

a. Defendant Griffin

Mr. Pinder claims that Defendant Griffin was deliberately indifferent to his need for migraine medication and the difficulties he encountered by being administered pills that were “crushed and covered in water.” Mr. Pinder seeks to hold Defendant Griffin liable based on his involvement in the grievance process. Mr. Pinder's claims against Defendant Griffin fail as matter of law.

First, Defendant Griffin's denial of several of Mr. Pinder's grievances is insufficient to establish liability under § 1983. *Rowe v. Norris*, 198 Fed. Appx. 579 (8th Cir. 2006). Furthermore, Defendant Griffin can be held liable only if he "actually knew of but deliberately disregarded" Mr. Pinder's serious medical need. *Id.* This showing requires a mental state "akin to criminal recklessness." *Coleman v. Rahija*, 114 F.3d 778, 784 (8th Cir. 1997) (quoting *Gordon v. Frank*, 454 F.3d 858, 862 (8th Cir. 2006)). As noted, Mr. Pinder must show "more than negligence, more even than gross negligence." *Fourte v. Faulkner County*, 746 F.3d 384, 387 (8th Cir. 2014) (quoting *Jolly v. Knudsen*, 205 F.3d 1094, 1096 (8th Cir. 2000)). Stated another way, to prevail on this claim, Mr. Pinder must show that the Defendant Griffin's actions were "so inappropriate as to evidence intentional maltreatment or a refusal to provide essential care." *Dulany v. Carnahan*, 132 F.3d 1234, 1240–41 (8th Cir. 1997).

Here, the undisputed evidence reveals that Defendant Griffin was not the official who responded to the nine grievances where Mr. Pinder complained about his failure to receive migraine medication. In the light of this undisputed evidence, Mr. Pinder cannot show that Defendant Griffin knew of, but disregarded, his need for medical treatment. Mr. Pinder did complain about the ADC's "crush and cover" policy in two grievances – MX-13-2421 and MX-13-02432. The Administrator for Medical and Dental Services, Defendant Griffin's subordinate, investigated and responded to those grievances. (#174-9 at pp.3-4)

In his response to grievance MX-13-2421, the Administrator noted that the prescription specified that Mr. Pinder's medication should be crushed and covered. The Administrator further responded that Mr. Pinder should drink more water to avoid scratching his throat with the pills. (#174-4 at p.4)

In response to grievance MX-13-2432, the Administrator noted that inmates were provided disposable cups with crushed and covered medications. (#174-9 at p.4) The Administrator agreed with the unit level staff member that these cups were destroyed after inmates returned them, despite Mr. Pinder's allegation that the cups were reused. (*Id.*)

Even if the Administrator had failed to investigate Mr. Pinder's complaints, which the papers presented show otherwise, Defendant Griffin cannot be held liable based solely on the conduct of his subordinates. *Ambrose v. Young*, 474 F.3d 1070 (8th Cir. 2007). Because Mr. Pinder has failed to come forward with any evidence even suggesting that Defendant Griffin acted with criminal recklessness with regard to his medical treatment, his claims against Defendant Griffin fail as a matter of law.

b. Defendant Straughn

Mr. Pinder claims that Defendant Straughn rejected the publication *Merck Manual of Medical Information* ("Merck Manual") in violation of his first amendment rights. Mr. Pinder also alleges that Defendant Straughn rejected the publication at issue in retaliation for Mr. Pinder's filing this civil action.

It is undisputed that the *Merck Manual* arrived at the Maximum Security Unit on September 29, 2014, three days after Mr. Pinder filed this lawsuit.⁴ (#13 at p.53) The mail room supervisor forwarded the publication to the Publication Review Committee on that date. (#174-8 at p.2) Each member of the Publication Review Committee, including Defendant Straughn, voted to reject the publication because it contained information about pharmaceuticals, including the content of both prescription and generic medication.⁵ (*Id.*) On October 2, 2014, Mr. Pinder was notified that the Publication Committee had voted to reject the delivery of the *Merck Manual*. (*Id.* at p.3)

1. First Amendment Claim

The ADC publications policy at issue, AD 14–22, provides that publications “are subject to inspection and may be rejected if found to be detrimental to the security, discipline or good order of the institution . . .” (#174-5 at p.1). The ADC Defendants rely on *Turner v. Safley*, 482 U.S. 78, 89 (1987), to support their position that a prison regulation that is alleged to impinge on prisoners’ constitutional rights is valid if it is reasonably related to legitimate penalogical interests. In *Turner*, the Court identified four factors to consider when determining if a restriction is reasonable: (1) whether a valid, rational connection exists between the regulation and the interest asserted; (2) whether

⁴ Defendant Straughn was not named as a Defendant until Mr. Pinder filed his amended complaint on November 14, 2014. (#13)

⁵ Defendant Straughn testified that, in 2014, the Publication Review Committee consisted of Chair Person/Deputy Warden Steve Outlaw, Amanda Bacus, Ronald Watson, and Joyce Gooley. (#174-8 at p.1)

alternative means of exercising the right exist; (3) the effect of the accommodation on the guards, other inmates, and the allocation of prison resources; and (4) whether an alternative exists which will accommodate the prisoner's needs with de minimis impact on the prison's asserted interests. *Id.* at 89-91.

First, there is little question that there is a rational connection between the policy at issue (and Defendant Straughn's conduct in accordance with that policy) and the interest of prison security. Defendant Straughn testified that the *Merck Manual* contains information regarding the content of pharmaceuticals and their intended effects and side-effects. (#174-8 at p.2) The ADC publication policy specifically states that publications may be rejected if they provide "instructions for production of alcohol or other drugs." (#174-5 at p.2) Further, Defendant Straughn testified that, in his experience, "it is important to prevent information about the content of drugs from entering the prison. Prescription and generic drugs can be used as contraband, to sell or trade other illegal items. Drugs can also be abused by inmates, which leads to a number of other behavioral and security problems." (#174-8 at p.2)

Turning to the second factor, whether alternative means for exercising his first amendment rights exist, Mr. Pinder specifically stated that he had other sources of medical information. He testified that he checked out books from the library; read articles provided by other inmates; had copies of similar material; and has a cousin who can research for him using Wikipedia. (#174-7 at pp.5, 8-9)

The third factor, the impact that accommodating Mr. Pinder's rights would have on prison staff and other prisoners, also weighs in Defendant Straughn's favor. Allowing inmates to possess information about the content of both generic and prescription pharmaceuticals could have a detrimental impact on inmate health and security. As noted, prison officials have an interest in prohibiting information regarding the content and side-effects of drugs from entering the prison population based on the presence of such drugs within ADC units, the ability of the inmates to sell or trade those drugs, and the ability of inmates to abuse specific drugs based on specific effects or side-effects. Courts "must be deferential to the prison officials' views of what material may be inflammatory." *Murchison v. Rogers*, 779 F.3d 882, 887 (8th Cir. 2015) (citing *Murphy v. Missouri Dep't of Corr.*, 372 F.3d 979, 986 (8th Cir. 2004)). "As the Supreme Court has cautioned, 'prison officials may well conclude that certain proposed interactions, though seemingly innocuous to laymen, have potentially significant implications for the order and security of a prison.'" *Id.* (citing *Thornburgh v. Abbott*, 490 U.S. 401, 407, 109 S.Ct. 1874 (1989)).

In his response to the ADC Defendants' motion, Mr. Pinder alleges that the *Merck Manual* does not contain information regarding the content of pharmaceuticals. Even if Mr. Pinder is correct, Defendant Straughn would be entitled to qualified immunity.

"Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments" and "protects all but the plainly incompetent or those who

knowingly violate the law.” *Stanton v. Sims*, __ U.S. __, 134 S.Ct. 3, 5 (2013) (per curiam) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743, 131 S.Ct. 2074 (2011)). It shields officers from liability “unless [their] conduct violates a clearly established constitutional or statutory right of which a reasonable person would have known.” *Shekleton v. Eichenberger*, 677 F.3d 361, 365 (8th Cir. 2012) (quoting *Brown v. City of Golden Valley*, 574 F.3d 491, 495 (8th Cir. 2009)).

Here, the Court cannot conclude that, in September 2014, the law was clearly established that Defendant Straughn should have known that he should reject the recommendation of the Publication Review Committee and allow Mr. Pinder to receive the *Merck Manual*. The law both at that time and as it stands today gives great deference to prison officials in determining what publications cause safety concerns in a prison environment. See, e.g., *Murphy*, 372 F.3d at 986 (“We recognize and defer to the expertise of prison officials on what is likely to be inflammatory”); *Overton v. Bazzetta*, 539 U.S. 126, 132, 123 S.Ct. 2162 (2003) (“We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.”); *Hamilton v. Schriro*, 74 F.3d 1545, 1553 (8th Cir. 1996); *Ivey v. Ashcroft*, 62 F.3d 1421, 1421 (8th Cir. 1995 (unpublished)) (“[P]rison officials have broad discretion to censor or restrict an inmate’s receipt of a publication to serve a legitimate penological interest—including the need for institutional security”).

Defendant Straughn is entitled to qualified immunity on Mr. Pinder's first amendment claim against him.

In addition, Mr. Pinder's request for injunctive relief against Defendant Straughn fails for another reason. Specifically, in his complaint, Mr. Pinder requests that the Court order "defendants to cease their retaliatory actions, . . . stop their censorship of books containing medical information, [and] stop the ban on books containing medical information." (#13 at pp.18-19)

Since Mr. Pinder filed this lawsuit, he has been transferred to Varner Supermax Unit of the ADC. (#97) In addition, Defendant Straughn has been re-assigned to the Cummins Unit. (#174-8 at p.3) Defendant Straughn, therefore, no longer has any involvement in the publication-review process at either the Maximum Security Unit, or the Varner Unit, where Mr. Pinder is currently housed. Thus, Mr. Pinder's request for injunctive relief from Defendant Straughn is now moot. *Martin v. Sargent*, 780 F.2d 1334 (8th Cir. 1985) (inmate's request for injunctive relief from a warden was moot after his transfer).

2. Retaliation Claim

To prove retaliation, Mr. Pinder must present evidence that: he engaged in constitutionally protected activity; Defendant Straughn took adverse action against him that would chill a person of ordinary firmness from engaging in that activity; and

retaliation was the actual motivating factor for the adverse action. *Lewis v. Jacks*, 486 F.3d 1025, 1028 (8th Cir. 2007); *Revels v. Vincenz*, 382 F.3d 870, 876 (8th Cir. 2004). An inmate claiming retaliation is faced with the substantial burden of proving that the actual motivating factor for the adverse action was as alleged. *Sisneros v. Nix*, 95 F.3d 749, 752 (8th Cir. 1996). Moreover, allegations of retaliation must be more than speculative and conclusory. *Atkinson v. Bohn*, 91 F.3d 1127, 1129 (8th Cir. 1996).

Here, Mr. Pinder has failed to present any evidence to support his retaliation claim. In contrast, Defendant Straughn has explained that the publication at issue was rejected by the Publication Review Committee as a whole because of its contents.

Even if Mr. Pinder could prove that Defendant Straughn's conduct was motivated, at least in part, by retaliation, this claim still would fail. A prisoner cannot prevail on a retaliation claim if the adverse action at issue was taken for both a legitimate reason and an improper motive, such as retaliation. *Id.*; *Webb v. Hedrick*, Case No. 09-2896, 2010 WL 4366438, *1 (8th Cir. Nov. 5, 2010) (unpublished opinion) (explaining that a prisoner cannot prevail "if retaliation was one factor" in the defendants' decision); *Ponchik v. Bogan*, 929 F.3d 419, 420 (8th Cir. 1991) (rejecting a retaliation claim when retaliation was only one of the factors leading to the inmate's transfer).

B. Medical Defendants' Motion for Sanctions

Mr. Pinder filed this lawsuit alleging that the Medical Defendants were deliberately indifferent to his serious medical needs. The Medical Defendants later served

discovery on Mr. Pinder, including a HIPAA-compliant medical authorization. Mr. Pinder, however, did not sign the authorization.

In August of 2016, the Medical Defendants moved for an order compelling Mr. Pinder to complete a HIPAA-compliant medical authorization within ten days. (#138) The Court, instead, gave Mr. Pinder thirty days to provide the Defendants with the medical authorization. The Court explained to Mr. Pinder that he had placed his medical condition at issue by filing the lawsuit and his execution of a HIAA-compliant medical authorization was required and not subject to debate. In addition, the Court specifically warned Mr. Pinder that his claims could be dismissed if he failed to comply with the Court's order. (#140)

Although Mr. Pinder has filed two hand-written "authorizations" with the Court (#150, #193), he continues to refuse to complete a valid, effective, and complete authorization. The time for doing so has passed.⁶

The Medical Defendants' motion for sanctions should be granted based on Mr. Pinder's refusal to provide them with a valid and effective HIPAA-compliant medical authorization.

⁶ Mr. Pinder's papers state that he has completed the limited authorizations "over his objection" and "threat of dismissal of his lawsuit." (#193) Mr. Pinder's version of medical authorizations limit: the medical care providers from which the Medical Defendants may seek medical records; the relevant time periods for which the Medical Defendants may seek medical records; the categories of medical records the Medical Defendants may seek; and the use of Mr. Pinder's medical records.

IV. Conclusion

The Court recommends that the motions for summary judgment filed by Maxor Pharmacy and the ADC Defendants (#160, #174) be GRANTED. Mr. Pinder's claims against Maxor Pharmacy and the ADC Defendants should be DISMISSED, with prejudice.

In addition, the Medical Defendants' motion for sanctions (#158) should be GRANTED. Mr. Pinder's claims against the Medical Defendants should be DISMISSED, without prejudice.

Finally, Mr. Pinder's pending motions should be DENIED, as moot.⁷ (#146, #152, #177, #187, #201)

DATED, this 27th day of January, 2017.


UNITED STATES MAGISTRATE JUDGE

⁷ With regard to Mr. Pinder's pending motions for preliminary injunctive relief, he has failed to present sufficient facts for the Court to conclude that he will face irreparable harm absent Court intervention. *Mid-Am. Real Estate Co. v. Iowa Realty Co.*, 406 F.3d 969, 977 (8th Cir. 2005). "Possible harm" is not enough to support a preliminary injunction; rather, there must be an actual threat of harm. *Randolph v. Rodgers*, 170 F.3d 850, 857 (8th Cir. 1999) (citing *Dataphase Sys. v. C.L. Sys.*, 640 F.2d 109, 113 (8th Cir. 1981)). Further, Mr. Pinder's most recent motion for preliminary injunctive relief includes allegations unrelated to the claims raised in this lawsuit and individuals who are not parties to this lawsuit. (#201, #202)

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**STEVEN PINDER
ADC #123397**

PLAINTIFF

V.

CASE NO. 5:14-CV-359-JM-BD

ALVA GREEN McDOWELL, et al.

DEFENDANTS

ORDER

The Court has received the Recommended Disposition (“Recommendation”) filed by Magistrate Judge Beth Deere. After a careful consideration of the Recommendation, Mr. Pinder’s timely objections and a *de novo* review of the record, the Court concludes that the Recommendation should be, and hereby is, approved and adopted as this Court’s findings in all respects.

The motions for summary judgment filed by Maxor Pharmacy and the ADC Defendants (docket entries #160, #174) are GRANTED. Mr. Pinder’s claims against Maxor Pharmacy and the ADC Defendants are DISMISSED, with prejudice.

In addition, the Medical Defendants’ motion for sanctions (#158) is GRANTED. Mr. Pinder’s claims against the Medical Defendants are DISMISSED, without prejudice.

Finally, Mr. Pinder’s pending motions are DENIED, as moot. (#146, #152, #177, #187)

IT IS SO ORDERED, this 9th day of February, 2017.


UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**STEVEN PINDER
ADC #123397**

PLAINTIFF

V.

CASE NO. 5:14-CV-359-JM-BD

ALVA GREEN McDOWELL, et al.

DEFENDANTS

JUDGMENT

Consistent with the Order that was entered on this day, it is CONSIDERED,
ORDERED, and ADJUDGED that this case is hereby DISMISSED.

IT IS SO ORDERED this 9th day of February, 2017.



UNITED STATES DISTRICT JUDGE

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

FEB 28 2017

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

JAMES W. MCCORMACK, CLERK
By: James W. McCormack
DEP. CLERK

STEVEN PINDER

PLAINTIFF / APPELLANT

v

NO: 5:14-CV-00359

ALVA GREEN-MCDOWELL; JACQUELINE CARSWELL; SONYA PEPPERS-DAVIS;
CORRECT CARE SOLUTIONS, LLC; ROBERT FLOSS; KEITHA DODSON; LEUVENIA BOSTON;
KENYETTA HORNER; JORGE DOMINICIS; JAMES HAMILTON; RORY GRIFFIN; WILLIAM
STRAUGHN; and MAXOR CORRECTIONAL PHARMACY SERVICES, et. al.,

DEFENDANTS / APPELLEES

NOTICE OF APPEAL

NOTICE is hereby given that Steven Pinder, plaintiff/appellant, pro-se, in the above styled and numbered civil action, appeals to the United States Court of Appeals for the Eighth Circuit from the ORDER OF this court

1. Denying Plaintiff partial summary judgment against defendant Straughn on and plaintiff's first amendment claim; and,
 2. The court's denying appointment of counsel for plaintiff for to effect discovery; and,
 3. The court's granting of summary judgment for defendant Maxor Correctional Pharmacy Services; and,
 4. The court's granting of summary judgment for ADC defendants Rory Griffin and William Straughn; and,
 5. The court's granting of qualified immunity to defendant Straughn; and
- (1)

March 8 2017 p37

6. The courts granting of Medical defendants Motion for sanctions after plaintiff filed a HIPAA-compliant authorization for release of the medical records relevant to this civil action; and
7. The courts failure to order the defendants to comply with the rules of discovery when the defendants refused to comply with all discovery requests of plaintiff; and,
8. The courts abuse of its discretion and the courts disregarding or discrediting plaintiff's documented evidence;

which ORDER approving these recommended disposition of the Magistrate was entered (DE# 208) February 9, 2017 and final judgment was entered (DE# 209) February 9, 2017.

EXECUTED THIS 26th
DAY OF FEBRUARY 2017

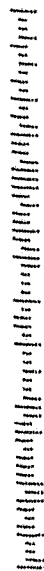
Respectfully submitted
Steven Pinder
STEVEN PINDER, Plaintiff/Appellant
#123397
P.O. Box 600
Grady, AR 71644-0600

Steven Pinder
#123397
P.O. Box 600
Grady, AR 71644-0600

LEGAL MAIL

722013325 COA1

Clerk
U.S. District Court
600 West Capitol Ave., A. 149
Little Rock, AR 72201-3325



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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**STEVEN PINDER
ADC #123397**

PLAINTIFF

V.

CASE NO. 5:14-CV-359-JM

ALVA GREEN McDOWELL, et al.

DEFENDANTS

ORDER

Pending before the Court is Steven Pinder's motion for leave to appeal *in forma pauperis* (IFP). (Docket entry #212) A party who is permitted to proceed IFP in district court may proceed on appeal IFP without further authorization, unless the district court has certified that the appeal would not be taken in good faith. FED. R. APP. P. 24(a)(3)(A).

In this case, the Eighth Circuit Court of Appeals granted Mr. Pinder leave to proceed IFP on October 29, 2015. (#81) Because the February 9, 2017 Judgment from which Mr. Pinder appeals does not contain a certification that an IFP appeal would not be taken in good faith (#209), his pending motion for leave to appeal IFP (#212) is GRANTED.

A prisoner who is permitted to file an appeal IFP still must pay the full statutory appellate filing fee. Method and timing of payment are the only issues to be resolved. *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997); FED. RULE APP. P. 3(e).

Based on information contained in a certified copy of Mr. Pinder's inmate trust fund account, the Court will assess an initial partial filing fee of \$3.69. Mr. Pinder's custodians are obligated to collect the initial partial filing fee, as well as the entire \$505.00 appellate filing fee by deducting 20% of the preceding month's income credited to Mr. Pinder's prison trust account each time the amount in the account exceeds \$10.00 until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). The payments forwarded on Mr. Pinder's behalf must be clearly identified by name and case number.

The Clerk of Court is directed to send a copy of this Order to the Warden of the Varner Unit, Post Office Box 600, Grady, Arkansas 71644; the ADC Trust Fund Centralized Banking Office, P.O. Box 8908, Pine Bluff, Arkansas 71611; and the ADC Compliance Office, P.O. Box 20550, Pine Bluff, Arkansas 71612-0550.

IT IS SO ORDERED this 8th day of March, 2017.


UNITED STATES DISTRICT JUDGE

U. S. COURT OF APPEALS - EIGHTH CIRCUIT
NOA SUPPLEMENTIN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

Please note any additions or deletions to the style of the case from the style listed on the docket sheet (or attach an amended docket sheet with the final style of case)

Date 3/8/2017

Caption: Pinder v. McDowell et al

Case No.: 5:14-cv-00359-JM

Appellant: Steven Pinder

Appellant's Attorney(s): Pro Se

Appellees: Alva Green McDowell, Dotson, Sonya Davis-Peppers, Jacqueline Carswell, et al*

Appellee's Attorney(s): Brent Jay Eubanks, Amber R. Schubert, Charles W. Lyford, Michael Paul Vanderford

Court Reporter(s): N/A

Name of Person who prepared appeal: Mary Zelhof, Deputy Clerk (501) 604-5358

Length of Trial (# of days)	Fee Paid? Y/N:	IFP Granted? Y/N	Pending IFP Motion Pending? Y/N
<u>N/A</u>	<u>N</u>	<u>Y</u>	<u>N</u>

Counsel Retained/Appointed/Pro Se	Pending Motions? Y/N
<u>Pro Se</u>	<u>N</u>

CRIMINAL CASES ONLY:

Is defendant incarcerated? _____

Where? _____
Address of Defendant: _____Please list all other defendants in this case if there were multiple defendants:
_____Special Comments: * Please see Docket Sheet for a complete list of Appellees